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Paper No. 8

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**JUN 27 2003**

**OFFICE OF PETITIONS**

In re Application of :  
Michael E.S. Luna et al :  
Application No. 09/838,077 :  
Filed: April 18, 2001 :  
Attorney Docket No. 03399P047 :  
DECISION ON PETITION  
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 14, 2003, under 37 CFR 1.137(f), which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application.

The petition is dismissed as **MOOT**.

An applicant who makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request were never made. See Notice published on www.USPTO.gov on June 6, 2003, which clarifies the USPTO's interpretation of the provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv).

In the instant application, a notice to rescind was filed prior to the filing date of a corresponding application in a foreign country. Therefore, since the filing of the request to rescind prior to the filing date of a corresponding application in a foreign application resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned for the reason stated above, the petition fee of \$1300 is being credited to Deposit Account No. 02-2666 as authorized.

This application is being forwarded to Technology Center Art Unit 2155 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8859.

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for Patent Examination Policy